113TH CONGRESS 1ST SESSION S.	
To i	mprove the provisions relating to the privacy of electronic communications.
	IN THE SENATE OF THE UNITED STATES
Mı	C. LEAHY introduced the following bill; which was read twice and referred to the Committee on
	A BILL
То	improve the provisions relating to the privacy of electronic communications.
1	Be it enacted by the Senate and House of Representa-
2	tives of the United States of America in Congress assembled,
3	SECTION 1. SHORT TITLE.
4	This Act may be cited as the "Electronic Communica-
5	tions Privacy Act Amendments Act of 2013".
6	SEC. 2. CONFIDENTIALITY OF ELECTRONIC COMMUNICA-
7	TIONS.
8	Section 2702(a)(3) of title 18, United States Code,
9	is amended to read as follows:
10	"(3) a provider of remote computing service or

electronic communication service to the public shall

11

1	not knowingly divulge to any governmental entity
2	the contents of any communication described in sec-
3	tion 2703(a), or any record or other information
4	pertaining to a subscriber or customer of such serv-
5	ice.''.
6	SEC. 3. ELIMINATION OF 180-DAY RULE; SEARCH WARRANT
7	REQUIREMENT; REQUIRED DISCLOSURE OF
8	CUSTOMER RECORDS.
9	(a) In General.—Section 2703 of title 18, United
10	States Code, is amended—
11	(1) by striking subsections (a), (b), and (c) and
12	inserting the following:
13	"(a) Contents of Wire or Electronic Commu-
14	NICATIONS.—A governmental entity may require the dis-
15	closure by a provider of electronic communication service
16	or remote computing service of the contents of a wire or
17	electronic communication that is in electronic storage with
18	or otherwise stored, held, or maintained by the provider
19	only if the governmental entity obtains a warrant issued
20	using the procedures described in the Federal Rules of
21	Criminal Procedure (or, in the case of a State court
22	issued using State warrant procedures) that is issued by
23	a court of competent jurisdiction directing the disclosure.
24	"(b) Notice.—Except as provided in section 2705,
25	not later than 10 business days in the case of a law en-

forcement agency, or not later than 3 business days in 2 the case of any other governmental entity, after a govern-3 mental entity receives the contents of a wire or electronic 4 communication of a subscriber or customer from a pro-5 vider of electronic communication service or remote com-6 puting service under subsection (a), the governmental entity shall serve upon, or deliver to by registered or first-8 class mail, electronic mail, or other means reasonably calculated to be effective, as specified by the court issuing 10 the warrant, the subscriber or customer— 11 "(1) a copy of the warrant; and 12 "(2) a notice that includes the information re-13 clauses (i) ferred to in and (ii)of14 2705(a)(4)(B). 15 "(c) Records Concerning Electronic Commu-16 NICATION SERVICE OR REMOTE COMPUTING SERVICE.— 17 "(1) IN GENERAL.—Subject to paragraph (2), a 18 governmental entity may require a provider of elec-19 tronic communication service or remote computing 20 service to disclose a record or other information per-21 taining to a subscriber or customer of the provider or service (not including the contents of communica-22 23 tions), only if the governmental entity— "(A) obtains a warrant issued using the 24 25 procedures described in the Federal Rules of

Criminal Procedure (or, in the case of a State
court, issued using State warrant procedures)
that is issued by a court of competent jurisdic-
tion directing the disclosure;
"(B) obtains a court order directing the
disclosure under subsection (d);
"(C) has the consent of the subscriber or
customer to the disclosure; or
"(D) submits a formal written request rel-
evant to a law enforcement investigation con-
cerning telemarketing fraud for the name, ad-
dress, and place of business of a subscriber or
customer of the provider or service that is en-
gaged in telemarketing (as defined in section
2325).
"(2) Information to be disclosed.—A pro-
vider of electronic communication service or remote
computing service shall, in response to an adminis-
trative subpoena authorized by Federal or State
statute, a grand jury, trial, or civil discovery sub-
poena, or any means authorized under paragraph
(1), disclose to a governmental entity the—
"(A) name;
"(B) address;

1	"(C) local and long distance telephone con-
2	nection records, or records of session times and
3	durations;
4	"(D) length of service (including start
5	date) and types of service used;
6	"(E) telephone or instrument number or
7	other subscriber number or identity, including
8	any temporarily assigned network address; and
9	"(F) means and source of payment for
10	such service (including any credit card or bank
11	account number), of a subscriber or customer of
12	such service.
13	"(3) Notice not required.—A governmental
14	entity that receives records or information under
15	this subsection is not required to provide notice to
16	a subscriber or customer."; and
17	(2) by adding at the end the following:
18	"(h) Rule of Construction.—Nothing in this sec-
19	tion or in section 2702 shall be construed to limit the au-
20	thority of a governmental entity to use an administrative
21	subpoena authorized under a Federal or State statute or
22	to use a Federal or State grand jury, trial, or civil dis-
23	covery subpoena to—
24	"(1) require an originator, addressee, or in-
25	tended recipient of an electronic communication to

24	"(a) Delay of Notification.—
23	"SEC. 2705. DELAYED NOTICE.
22	amended to read as follows:
21	Section 2705 of title 18, United States Code, is
20	SEC. 4. DELAYED NOTICE.
19	tronic communication, or".
18	(2) by striking "the contents of a wire or elec-
17	order for disclosure under subsection (c)"; and
16	under subsection (b) or (c)" and inserting "A court
15	(1) by striking "A court order for disclosure
14	ed—
13	Section 2703(d) of title 18, United States Code, is amend-
12	(b) Technical and Conforming Amendments.—
11	nications system owned or operated by the entity.".
10	held, stored, or maintained on an electronic commu-
9	ernmental entity, if the electronic communication is
8	director, employee, or agent of the entity to a gov-
7	an electronic communication to or from an officer,
6	carrying out their duties) to disclose the contents of
5	ployees, or agents of the entity (for the purpose of
4	communication services to the officers, directors, em-
3	"(2) require an entity that provides electronic
2	to the governmental entity; or
1	disclose the contents of the electronic communication

1	"(1) In general.—A governmental entity that
2	is seeking a warrant under section 2703(a) may in-
3	clude in the application for the warrant a request for
4	an order delaying the notification required under
5	section 2703(b) for a period of not more than 180
6	days in the case of a law enforcement agency, or not
7	more than 90 days in the case of any other govern-
8	mental entity.
9	"(2) Determination.—A court shall grant a
10	request for delayed notification made under para-
11	graph (1) if the court determines that there is rea-
12	son to believe that notification of the existence of the
13	warrant may result in—
14	"(A) endangering the life or physical safety
15	of an individual;
16	"(B) flight from prosecution;
17	"(C) destruction of or tampering with evi-
18	dence;
19	"(D) intimidation of potential witnesses; or
20	"(E) otherwise seriously jeopardizing an
21	investigation or unduly delaying a trial.
22	"(3) Extension.—Upon request by a govern-
23	mental entity, a court may grant 1 or more exten-
24	sions of the delay of notification granted under para-
25	graph (2) of not more than 180 days in the case of

I	a law enforcement agency, or not more than 90 days
2	in the case of any other governmental entity.
3	"(4) Expiration of the delay of notifica-
4	TION.—Upon expiration of the period of delay of no-
5	tification under paragraph (2) or (3), the govern-
6	mental entity shall serve upon, or deliver to by reg-
7	istered or first-class mail, electronic mail, or other
8	means reasonably calculated to be effective as speci-
9	fied by the court approving the search warrant, the
10	customer or subscriber—
11	"(A) a copy of the warrant; and
12	"(B) notice that informs the customer or
13	subscriber—
14	"(i) of the nature of the law enforce-
15	ment inquiry with reasonable specificity;
16	"(ii) that information maintained for
17	the customer or subscriber by the provider
18	of electronic communication service or re-
19	mote computing service named in the proc-
20	ess or request was supplied to, or re-
21	quested by, the governmental entity;
22	"(iii) of the date on which the warrant
23	was served on the provider and the date on
24	which the information was provided by the
25	provider to the governmental entity;

1	"(iv) that notification of the customer
2	or subscriber was delayed;
3	"(v) the identity of the court author-
4	izing the delay; and
5	"(vi) of the provision of this chapter
6	under which the delay was authorized.
7	"(b) Preclusion of Notice to Subject of Gov-
8	ERNMENTAL ACCESS.—
9	"(1) In general.—A governmental entity that
10	is obtaining the contents of a communication or in-
11	formation or records under section 2703 may apply
12	to a court for an order directing a provider of elec-
13	tronic communication service or remote computing
14	service to which a warrant, order, subpoena, or other
15	directive under section 2703 is directed not to notify
16	any other person of the existence of the warrant,
17	order, subpoena, or other directive for a period of
18	not more than 180 days in the case of a law enforce-
19	ment agency, or not more than 90 days in the case
20	of any other governmental entity.
21	"(2) Determination.—A court shall grant a
22	request for an order made under paragraph (1) if
23	the court determines that there is reason to believe
24	that notification of the existence of the warrant,
25	order, subpoena, or other directive may result in—

1	"(A) endangering the life or physical safety
2	of an individual;
3	"(B) flight from prosecution;
4	"(C) destruction of or tampering with evi-
5	dence;
6	"(D) intimidation of potential witnesses; or
7	"(E) otherwise seriously jeopardizing an
8	investigation or unduly delaying a trial.
9	"(3) Extension.—Upon request by a govern-
10	mental entity, a court may grant 1 or more exten-
11	sions of an order granted under paragraph (2) of
12	not more than 180 days in the case of a law enforce-
13	ment agency, or not more than 90 days in the case
14	of any other governmental entity.
15	"(4) Prior notice to law enforcement.—
16	Upon expiration of the period of delay of notice
17	under this section, and not later than 3 business
18	days before providing notice to a customer or sub-
19	scriber, a provider of electronic communication serv-
20	ice or remote computing service shall notify the gov-
21	ernmental entity that obtained the contents of a
22	communication or information or records under sec-
23	tion 2703 of the intent of the provider of electronic
24	communication service or remote computing service
25	to notify the customer or subscriber of the existence

- 1 of the warrant, order, or subpoen seeking that in-
- 2 formation.
- 3 "(c) Definition.—In this section and section 2703,
- 4 the term 'law enforcement agency' means an agency of the
- 5 United States, a State, or a political subdivision of a
- 6 State, authorized by law or by a government agency to
- 7 engage in or supervise the prevention, detection, investiga-
- 8 tion, or prosecution of any violation of criminal law, or
- 9 any other Federal or State agency conducting a criminal
- 10 investigation.".

11 SEC. 5. RULE OF CONSTRUCTION.

- 12 Nothing in this Act or an amendment made by this
- 13 Act shall be construed to apply the warrant requirement
- 14 for contents of a wire or electronic communication author-
- 15 ized under this Act or an amendment made by this Act
- 16 to any other section of title 18, United States Code (in-
- 17 cluding chapter 119 of such title (commonly known as the
- 18 "Wiretap Act")), the Foreign Intelligence Surveillance Act
- 19 of 1978 (50 U.S.C. 1801 et seq.), or any other provision
- 20 of Federal law.